

Sanjiv Nanda Vs. State

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Court : Delhi

Decided On : Oct-05-1999

Reported in : 2000IAD(Delhi)188; 82(1999)DLT588

Judge : K.S. Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 304 and 439; [Indian Penal Code \(IPC\), 1860](#) - 34, 201 and 308

Appeal No. : CrI.M.(M) 2306/99

Appellant : Sanjiv Nanda

Respondent : State

Advocate for Def. : Shri I.U. Khan, Spl. PP.

Advocate for Pet/Ap. : Sh. R.K. Anand Sr. Adv.,; S/Shri Lovkesh Sawhney and; Sri B

Judgement :

ORDER

CrI. M. (M) 2306/99

1. By filing the present petition under Section 439 Cr.P.C. the petitioner who is facing trial under Section 304 Part I/308/201/34 IPC, seeks his release on bail.

2. In the shocking incident which took place in the intervening night of 9th/10th January, 1999 at about 4.30 AM in front of Car Care Centre petrol pump at Lodhi Road six persons were killed and one sustained grievous injuries. It is alleged by the prosecution that on receipt of a copy of D.D. No. 27A dated 10.1.1999 SI Kailash Chander reached the said place of occurrence and there he found Ram Raj, Rajan Kumar and one more person who later on came to be identified as Gulab, lying dead. He was informed that four persons who were also injured had been taken to hospital in a PCR van. On the spot SI Kailash Chander also found a bumper, rear view mirror and pieces of glass of a black car lying scattered in an area of about 100/125 feet in addition to a broken number plate. On joining the various pieces of the number plate M-312-LYP Park Lane BMW was found written thereon. In the meantime Inspector Jagdish Pandey posted in PCR on being apprised about the incident too reached the place of occurrence. He noticed trail of oil at the spot and on following, the same was found continuing up to House No.50, Golf Links, New Delhi. On enquiry, it was revealed that this house belonged to Rajiv Gupta, co-accused. A BMW vehicle of black colour in damaged condition without a number plate was found parked inside the said house by Inspector Jagdish Pandey. After the registration of FIR No.17/99 on the basis of rukka sent by SI Kailash Chander, broken number plate etc. lying scattered at the spot were seized vide a memo by the said SI. The said vehicle was also seized by him vide a separate memo on 10th January, 1999. It is further alleged that the petitioner and five co-accused were arrested on 10th January, 1999 itself. MLC of the petitioner in respect of the injuries on his person was prepared at All India Institute of Medical Sciences. One woollen sweater and a pant having blood stains handed over by the petition-er were seized vide a separate memo on 11th January, 1999. Stains of blood lifted from the steering of the said vehicle on 11th January, 1999 and the other material exhibits were sent to FSL for opinion. Out of the four injured, Nashir, Mehdi Hassan and Peru Lal succumbed to their injuries in the hospital later on.

3. Manoj Malik, surviving injured, Hari Shankar Yadav and Sunil Kulkarni are alleged to be the eye witnesses of the occurrence. It is claimed by the prosecution that the said vehicle was being driven by the petitioner and co-accused Manik Kapoor was sitting with him on the front seat at the time the occurrence took place

and both of them had come out of the vehicle for a short while after it had stopped after colliding against the central verge of the road and at that point of time Sunil Kulkarni and Hari Shankar Yadav happened to identify them.

4. Statement of Hari Shankar as PW-1 was recorded on 18th August, 1999 while that of Manoj Malik as PW-2 on 30th August, 1999. Both of them did not support the prosecution case. PW-1 deposed that he had not seen the accident and he came out of the aforementioned petrol pump on hearing the noise. PW-2 stated that the accident was not caused by the said vehicle but by a truck and he received injuries on his person from the truck. Sunil Kulkarni, another alleged eye witness of the occurrence was dropped by the prosecution on 30th September, 1999 as it felt that he too would not support the prosecution case.

5. While opposing the bail, submission advanced by Sh. I.U. Khan, Special Public Prosecutor was that vehicle No. M-312-LYP is owned by the sister of the petitioner and despite the said three eye witnesses having turned hostile, the prosecution has sufficient circumstantial evidence to prove that the said vehicle was involved in the occurrence in question and it was the petitioner alone who was driving it at the relevant time. In support of the submission he invited my attention to the statements recorded under Section 161 Cr.P.C. of Vijender Kumar and aforesaid Inspector Jagdish Pandey, MLC of the petitioner, FSL report dated 27th January, 1999 and the inspection report of the vehicle dated 6th February, 1999 etc. According to Sh.Khan the petitioner is a British national and in the event of his being released on bail, he would not be readily available for trial. On the contrary, it was urged by Sh. R.K. Anand appearing for the petitioner that as is manifest from the order on charge dated 2nd August, 1999 the petitioner had been charged for the offence under Section 304 Part I, IPC particularly taking note of the statements/supplementary statements recorded under Section 161 Cr.P.C. of said Hari Shankar Yadav and Sunil Kulkarni and after their having turned hostile/dropped, the petitioner if ultimately held guilty, can be convicted under Section 304A IPC which is bailable instead of under Section 304 Part I IPC. Further, reliance by the prosecution on FSL report dated 27th January, 1999 which, inter alia, notices that human blood of group 'B' was detected on the sweater and the pant handed over by the petitioner to the police and on piece of

cloth having stains of blood lifted from the steering of the said vehicle, is misplaced as there is no material on record to suggest that the blood group of the petitioner is also 'B'.

6. Barring few witnesses, the witnesses to be examined in the case by the prosecution are either police or Government officials.

7. Having considered the submissions referred to above and the facts and circumstances of the case, I am inclined to admit the petitioner on bail. He will be released on his furnishing personal bond in the sum of Rs. 25,000/- with two sureties in the like amount to the satisfaction of the trial court. Since the petitioner is a British national, pending trial neither the passport will be returned to him nor will he leave the country without the permission of the trial court and regularly attend the dates fixed in the case. Dasti.

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